

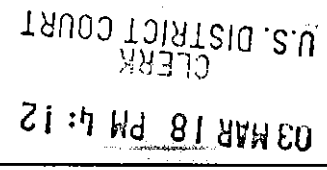
United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 4383	DATE	3/17/2003
CASE TITLE	Gerald M. Sullivan vs. William Green Homes, RMC.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:**DOCKET ENTRY:**

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Judgment is ordered to be entered in favor of Gerald M. Sullivan, not individually but as Trustee of Plumbers' Pension Fund, Local 130, U.A.; Plumbers' Welfare Fund, Local 130, U.A.; The Trust Fund For Apprentice and Journeymen Education and Training, Local 130, U.S.; and Chicago Journeymen Plumbers' Local Union 130, U.S., Group Legal Services Plan Fund and against William Green Homes, RMC in the sum of \$156,124.65.
- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	Document Number 31
No notices required.		date docketed	
Notices mailed by judge's staff.		docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
<input checked="" type="checkbox"/> Mail AO 450 form.			
<input type="checkbox"/> Copy to judge/magistrate judge.			
SN	courtroom deputy's initials		

GERALD M. SULLIVAN, et al.,
Plaintiffs,
v.
WILLIAM GREEN HOMES, RMC.,
Defendant.

DOCKETED
MAR 19 2003

This ERISA action has been pending for a near eternity in comparison with mine-run actions of its type, in which Trustees for one or more employee benefit plans seek to recover assertedly unpaid contributions from participating employers. It is unnecessary to recount the history of this nearly three-year-old lawsuit--suffice it to say that defendant William Green Homes, RMC ("Green") originally defaulted, then came into the case but failed to present any meritorious defense, and most recently has been delinquent over an extended period of time (some of which has been excusable due to circumstances affecting the unavailability of its defense counsel) in responding to the motion of plaintiff Gerald Sullivan as Trustee ("Trustee") to prove up damages.

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plans for which Trustee acts. As paragraph 2 of Green's November 25, 2002 objections to the prove-up petition states on that score:

Defendant did not ever employ any members of the Journeymen Plumbers or Chicago Journeymen Plumbers' Local Union 130, U.A. as required by the Memorandum Agreement.

But there is an easy answer to that mistaken position:

1. It is not union membership but rather covered work that defines an employer's obligation to make ERISA contributions (see such cases as Central States, S.E. & S.W. Areas Pension Fund v. Joe McClelland, Inc., 23 F.3d 1256, 1258 (7th Cir. 1994) and Moriarty v. Larry G. Lewis Funeral Directors Ltd., 150 F.3d 773, 776 (7th Cir. 1998)). Green's reference to "members of the Journeymen Plumbers" reflects a misapprehension that would substitute union membership for the true criterion of an employee's working as a journeyman plumber as the status that triggers the ERISA contribution obligation.

2. That point is further confirmed (a) by the introduction to the February 21, 2000 Memorandum Agreement ("Agreement") between Green and the union, which identifies Green as an "Employer" that "regularly employs not less than two (2) Journeymen Plumbers," and (b) by the language of Agreement ¶1:

The Employer recognizes the Union as the exclusive

collective bargaining agent for all of its employees who perform any of the work within the trade and territorial jurisdiction of the Union as set forth in the agreement and agreements referred to in paragraph 2, below.¹

3. Indeed Green, having entered into the Agreement, is really not in a position to dispute that it regularly employs journeymen plumbers. Whether those employees are or are not union members, as contrasted with their being plumbers for whom the union is the designated collective bargaining agent, is entirely irrelevant.

Accordingly this Court rejects Green's only asserted putative defense to this action. Trustee's prove-up established the total damages as of November 15, 2002 as \$153,427.50 and stated additionally that interest would continue to accrue thereafter at the rate of \$899.05.

It is also true that Trustee's counsel has been required to expend modest amounts of time since then in attending a couple of status hearings, but those cannot have affected the earlier calculation appreciably. Judgment is therefore ordered to be entered in favor of Gerald M. Sullivan, not individually but as Trustee of Plumbers' Pension Fund, Local 130, U.A.; Plumbers' Welfare Fund, Local 130, U.A.; The Trust Fund For Apprentice and

¹ [Footnote by this Court] As is normally the case with multiemployer ERISA plans, the agreement referred to in Agreement ¶1 is one between the union and an employer association (in this instance the Plumbing Contractors Association of Chicago and Cook County).

Journeyman Education and Training, Local 130, U.A.; and Chicago
Journeyman Plumbers' Local Union 130, U.A., Group Legal Services
Plan Fund and against William Green Homes, RMC in the sum of
\$156,124.65.



Milton I. Shadur
Senior United States District Judge

Date: March 17, 2003